1985-1986 ANNUAL REPORT

April 1, 1985—March 31, 1986

Human Rights

A Responsibility We all share.

British Columbia Council of Human Rights

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The Honourable Lyall F. Hanson
Minister of Labour and Consumer Services
Parliament Buildings
Victoria, British Columbia

Sir:

On behalf of the British Columbia Council of Human Rights, I am pleased to submit to you the Annual Report of the British Columbia Council of Human Rights for the period April 1, 1985 to March 31, 1986.

James R. Edgett
Chairman

Chairman's Remarks

During this reporting period, the first full year of operations, the British Columbia Council of Human Rights established systems and programs to meet both the mandate set out in the *Human Rights Act* and the increasing demand for public information and education.

Council activities have been focussed on three central objectives:

1. To receive, investigate and adjudicate complaints alleging discrimination contrary to the *Human Rights Act*.
2. To inform the community at large of the provisions of the *Human Rights Act*.
3. To increase awareness in both the Respondent and Complainant communities of their rights and responsibilities under the *Human Rights Act*.

Receiving, investigating and adjudicating complaints of discrimination filed under the *Human Rights Act* demanded most of the Council's time, energy and resources. Still, the Council made significant strides in carrying out its information and education programs.

These information and education programs are detailed later in this report, but their importance should be emphasized at this juncture. The British Columbia Council of Human Rights is firmly committed to the principles of individual dignity. We believe that equality of opportunity is a fundamental right.

Unfortunately, dignity cannot be legislated, nor can equality be achieved solely by dealing with complaints on a case-by-case basis. In addition to strong and impartial enforcement of the *Human Rights Act*, an effective human rights information and education program is essential if we are to change attitudes and eradicate the kind of discrimination that diminishes dignity and erodes equality. Some important first steps were taken in the Council's education program this year and British Columbians can expect this program to continue.

None of the Council's achievements would have been possible if it were not for the hard work and dedication of the staff and Council members. Their commitment and the involvement of individuals and groups throughout the province will do much to ensure that human rights are safeguarded in the years ahead.

The Structure and Mandate of the British Columbia Council of Human Rights

The *Human Rights Act* was proclaimed on September 13, 1984. The legislation protects the fundamental rights of British Columbians by prohibiting discrimination on the basis of race, colour, ancestry, place of origin, political belief, religious belief, marital status, physical or mental disability, sex, age or

criminal or summary conviction. The complete text of the *Human Rights Act* is found in Appendix B.

The British Columbia Council of Human Rights consists of five members appointed by the Lieutenant Governor in Council: Chairman James Edgett; members John Joe, Eric Powell, Natexa Verbrugge and Douglas Wilson. The members were each appointed to a three-year term effective July 20, 1984.

The five member Council is responsible for administering the *Human Rights Act*. Their mandate includes receiving, investigating and adjudicating complaints alleging discrimination contrary to the legislation. The Council is also authorized by the *Human Rights Act* to approve special programs to assist disadvantaged groups. All services provided by the Council are available to the public without charge.

Enforcement of the Human Rights Act

The *Human Rights Act* prohibits discrimination on a number of grounds, as noted above. Discrimination is prohibited in the areas of publications, public facilities, the purchase of property, tenancy, employment advertisements, wages, employment and unions and professional associations. The Council's jurisdiction extends to all matters that fall within the constitutional authority of the provincial Legislature.

Complaints against federally regulated agencies such as airlines, railways and the federal government fall under the jurisdiction of the Canadian Human Rights Commission.

Any person who believes that he or she has been discriminated against in contravention of the *Human Rights Act* is encouraged to contact the nearest office of the British Columbia Council of Human Rights or the Employment Standards Branch of the Ministry of Labour and Consumer Services. All conversations are confidential, and no action is taken until a complaint is formally filed.

When a complaint is filed, the Council reviews the complaint to determine if it should proceed with an investigation. The Council may decide not to proceed with an investigation if the complaint:

- — is not within the jurisdiction of the Council;
- — could be more appropriately dealt with under another Act;
- — is trivial, frivolous, vexatious or made in bad faith; or
- — is based on facts that occurred more than six months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice would result to any person affected by the delay.

An investigation of a complaint includes gathering information from all parties. Impartiality is assured at all stages of the process. Settlements often occur during this process.

Following the investigation, the Council must either:

— order that the proceedings be discontinued;

— recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened the *Human Rights Act* submit a report to the Minister;

— submit a report to the Minister; or

— designate one member of the Council to hold a hearing.

Both parties may be represented by legal counsel at any stage of the investigation and at a hearing. Persons may be provided with the services of legal counsel pursuant to a contract between Council and the Legal Services Society.

Persons who are found to have contravened the *Human Rights Act* shall be ordered to cease and desist the discriminatory practice and may be ordered to pay compensation for wages or salary lost or expenses incurred by the person discriminated against and, in addition, an amount not exceeding $2,000.00. In addition, the person who is found to have contravened the Act may be ordered to make available to the person discriminated against the right, opportunity or privilege that he or she was denied.

DISPOSITION OF COMPLAINTS

During this reporting period, 59 complaints were resolved, 41 were discontinued when the allegations were found to be not substantiated, 56 were designated to hearings and, at March 31, 1986, 166 were still under investigation.

A full report of cases received and their disposition can be found in Appendix A.

REQUESTS FOR INFORMATION

During this reporting period, Council received 5,863 inquiries and provided 2,813 referrals to other agencies. In addition, Council distributed approximately 61,000 copies of brochures and publications to individuals and groups throughout the province.

SPECIAL PROGRAMS

Section 19(2) of the *Human Rights Act* gives the Council the authority to approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups. All individuals, companies or groups who wish to implement a program which gives preference to such individuals or groups should contact the Council for approval.

During this reporting period, Council granted exemptions under Section 19(2) to the Capital Region Association for the Mentally Handicapped, Women's Non-Traditional Training Program, Independent Living Housing Society of Greater Victoria and the First Citizens' Fund (Ministry of Provincial Secretary and Government Services).

EDUCATION

In October 1985 Council published an information kit for employers. The kit included an Employer's Guide, a Hiring Guide, and fact sheets on sexual harassment and disability. Subsequent speaking engagements with business organizations and participation in the three-day Vancouver Business Information and International Trade Fair in October, 1985 enabled Council to inform members of the business community about the *Human Rights Act* and the importance of evaluating employees and potential employees on individual merit rather than on group characteristics.

The Council also published its first newsletter in February 1986. The newsletter focussed on British Columbia's commitment to persons with disabilities and outlined employer's rights and responsibilities with respect to persons with disabilities.

Toward the end of the year, the focus shifted to students and young people. The Council sponsored a human rights poster project for elementary school classes and awarded the three best overall class submissions with a certificate and $200.00 which went to the classes for projects or supplies. The Council judged class entries from Kildala School, Kitimat; Quick Elementary School, Quick; and Lord Kitchener Elementary School, Vancouver, as the best classroom-wide submissions from the 29 participating classes.

The Council also sponsored an essay contest for secondary school students. The students were asked to answer the question 'If you were to write a Declaration or Charter of Human Rights, what would you include and why?' The three best essays out of 34 submissions were written by Tania Jones, George Elliot Secondary School, Winfield, and John Ensor and Dannette Willigar of Wellington Junior Secondary School in Nanaimo. Each student received a certificate and $200.00. Council members visited the respective schools to make th awards and speak to students about human rights issues.

The Council also published a 'Guide for Young People in the Workplace' which provides students and young people with a clear explanation of the Act concerning employment and complaint procedures. As young people, especially young women, are vulnerable to sexual harassment at work, this Guide includes a definition of sexual harassment and the steps persons should take if they believe they have been harassed.

Council is planning to develop course material on human rights — a subject area in the new Grade 11 social studies curriculum — for teachers and students. This material is being developed in consultation with the British Columbia Social Studies Teachers' Association and the Ministry of Education.

SPEAKING ENGAGEMENTS

Council members and staff spoke to 52 groups throughout the province and gave numerous workshop and seminars. Some of the groups addressed by Council members were the West Kootenay Human Rights Coalition, Elizabeth Fry Society, Surrey Teachers' Association, Victoria Law Centre, Legal Resource Association for Disabled, law classes at University of Victoria and University of British Columbia, Women in Trades at the College of New Caledonia, Prince George, Chambers of Commerce and secondary school classes.

NATIONAL AND INTERNATIONAL LIAISON

The British Columbia Council of Human Rights is a member agency of the Canadian Association of Statutory Human Rights Agencies (CASHRA). In addition, the Council participates in the Federal/Provincial/Territorial Committee of Officials Responsible for Human Rights through Council member Douglas Wilson who is the official representative for British Columbia. This latter committee is responsible for monitoring Canada's compliance with the various international conventions to which Canada is a signatory. Through this committee, new human rights issues are brought to the attention of official representatives and Ministers responsible for Human Rights. The Council has also established a working relationship with the Secretary of State offices in Victoria and Vancouver.

LEGAL AID

The Council has a contract with the Legal Services Society of B.C. to ensure that all persons involved in a human rights complaint are provided with legal counsel regardless of their ability to pay.

AMENDMENT TO THE ACT

Section 14 of the Act was amended on July 19, 1985 by adding the following:

(2.1) A member of the council who is designated under subsection 1(d) has, for the purposes of that subsection,

(a) the privileges and protection of section 12 of the *Inquiry Act* and

(b) where oral submissions are made under subsection 1(d), the power of sections 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

The Complete text of the Act, including the amendment, is found in Appendix B.

CASE SUMMARIES

Settlements

During the course of the investigation the parties often reach agreement and settle the complaint. Some examples of settlements are given below.

A woman filed a complaint alleging she was terminated from her job managing a men's clothing store because the owners wanted to hire a male store manager. The settlement included $1,200.00 and a letter of recommendation.

In another case, a man received $425.00 for expenses incurred when he was refused accommodation in a Lower Mainland apartment building because of his marital status. The managers allegedly told him they only rented to married couples or single persons not living together.

A woman alleged she was told at a job interview with a restaurant in the Interior that they only hired males to wait on tables. After receiving $1,500.00 for lost wages and humiliation and injury to self-respect, she withdrew her complaint.

A woman complained that she had to quit her job waiting tables because the owner of the restaurant would grab and hug her, despite her objections. The settlement included a payment of $1,500.00 to the complainant.

In another sexual harassment case, a secretary alleged she was forced to quit because of continuing harassment by three male co-workers, which included displaying objectionable pictures and artifacts, physical contact and verbal harassment. After an investigation, an agreement was reached which included a $2,500.00 payment to the secretary and an explanation of sexual harassment to the three co-workers.

Two women alleged they were restricted to dispatching duties as emergency medical assistants because they were unable to lift 215 lbs. as part of the testing procedures. After an investigation, a settlement was reached which resulted in the elimination of the lifting requirement.

A couple alleged they were denied employment as apartment managers because of their son's mental disability. They withdrew their complaint after receiving $750.00 for lost potential earnings and expenses and a letter of apology.

A taxi dispatcher received as part of a settlement $1,750.00 and a guarantee of full-time employment at a set wage for one year after complaining that she was sexually harassed by her manager and fired after telling the company owner.

A dental assistant in the Lower Mainland alleged that her former employer, a dentist, had sexually harassed her over a considerable length of time and eventually fired her. In settlement, she received $7,200.00 for lost wages and $2,000.00 for general damages.

HEARINGS

The Council held 23 hearings during this reporting period and released 14 decisions, four of which were cases heard during the previous reporting period. Summaries of some of these decisions follow:

Dadwan v. Idylwild Inn (1979) Ltd., et al.

Prohibited Grounds: Race, Colour & Ancestry (the *Human Rights Code*, Section 5)

Member Designate: James R. Edgett

Date of Decision: November 8, 1985

Allegation: Mr. Sukvinder S. Dadwan alleged he was refused rental of an apartment at two Houston apartment buildings because of his race, colour and ancestry.

Mr. Dadwan, an Indo-Canadian, viewed a two bedroom apartment with the manager, Ms. Wanda Bisson. She stated that she did not like to rent suites to 'East Indian' people with children and refused to hold it for him while he contacted his wife in 100 Mile House. She indicated there were no other suites for rent. Although he saw on subsequent visits a 'For Rent' sign at the apartment building, when Mr. Dadwan again called Ms. Bisson she informed him that there were no vacancies in the apartment building.

Subsequently, Mr. John Lotier, Personnel Manager of Houston Forest Products and a City Alderman, inquired about an apartment on behalf of Mr. Dadwan. He informed Ms. Bisson and her boss, Mr. Ken Kwan, that her refusal to rent to 'East Indians' was discriminatory. Soon after, a rental agreement was drawn up for occupancy of an apartment and Mr. Dadwan paid a $400.00 deposit. However, Ms. Bisson refused Mr. Dadwan the keys a few days before he was to move in and attempted to return his deposit.

Response: Mr. Kwan confirmed that the respondents were owners or part owners of the buildings in question and that Ms. Bisson was employed by the respondents to manage the apartments. Mr. Kwan denied discriminating against Mr. Dadwan and said that if Ms. Bisson had done so, it was without his knowledge or consent.

Decision: James Edgett found that Mr. Dadwan was continuously discriminated against from mid-July to August 27, 1984 and that blatant discrimination had continued even after Mr. Lotier had informed Mr. Kwan and Ms. Bisson that this treatment of Mr. Dadwan was discriminatory. He found the respondents bore responsibility for the discriminatory acts of Ms. Bisson and each of the three companies was ordered to pay Mr. Dadwan $1,500.00 because of the extreme humiliation, embarrassment and injury to his self-respect.

Myszkowski v. Ministry of Transportation and Highways, Bridge Engineering Branch

Prohibited Ground: Place of Origin (citizenship) (the *Human Rights Act*, Section 8)

Member Designate: James R. Edgett

Date of Decision: February 21, 1986

Allegation: The complainant, at the time of the alleged discrimination, was a landed immigrant from Poland. He was terminated as a technician with the respondent because of the citizenship requirements in Section 23 of the *Public Service Act*. He alleged these requirements contravened the *Human Rights Act*. The complainant argued that the terms 'place of origin and ancestry' as stated in the *Human Rights Act* include or encompass 'citizenship'.

Response: The respondent agreed with the facts of the case, but held that 'citizenship' is not a prohibited ground in the *Human Rights Act*.

Decision: James Edgett, after considering the arguments and cases cited, concluded that neither 'ancestry' nor 'place of origin' can be equated with 'citizenship'. While the Member Designate agreed that human rights legislation should be given a broad interpretation, he found that this interpretation should not be so broad that the words lose their integrity within the legislative context. The Member Designate also considered whether this employment decision was a 'cloak' for discrimination on other grounds prohibited by the *Human Rights Act*. No evidence was found to suggest this.

Martin v. B.C. Association for Children and Adults with Learning Disabilities

Prohibited Ground: Physical Condition (without reasonable cause), (the *Human Rights Code*, Section 8)

Member Designate: John I. D. Joe

Date of Decision: January 27, 1986

Allegation: The complainant alleged she was dismissed from her job with the respondent because of her physical condition, a back injury.

Mrs. Martin was employed by the respondent from November 1980 until August 1983. During that time she was responsible for the day to day administration of the office as well as specific projects such as fund raising and recruiting members.

In February 1983, Mrs. Martin began experiencing problems with a disc in her back. A back specialist prescribed complete bed rest for her and she subsequently arranged with the respondent to work at her home. However, this arrangement was unsatisfactory, and she returned to the office, where, with the consent of the respondent, she worked while lying on an air mattress.

Mrs. Martin continued working until June when she was hospitalized for the treatment of her back. While she was in the hospital, the respondent hired a replacement and later informed Mrs. Martin that she was fired due to her health problems.

Response: The Association agreed Mrs. Martin was fired because of her physical disability, but argued the firing was justified since Mrs. Martin's back problems prevented her from being in the office and performing her duties.

Decision: John Joe found there was no evidence to establish, on an objective basis, that Mrs. Martin's presence in the office was a *bona fide* job qualification. There was also evidence that the respondent consented to her absences from the office and there was conflicting testimony as to whether or not the complainant had received a leave of absence for the period she was hospitalized. However, there was some evidence showing a general understanding that she was on temporary leave and that an employee, hired as a temporary replacement, was put on a more permanent basis following the complainant's dismissal.

Case law shows that proof of reasonable cause of dismissal requires some reasonable assessment or inquiry objectively relating a person's abilities to the safe, economical and efficient performance of a job. The Member Designate found that, on the evidence presented, the respondent had not undertaken such an assessment or inquiry. Thus, the evidence did not establish reasonable cause for dismissal.

The Member Designate ordered the respondent to:

- cease and desist the contravention;
- provide the complainant with an employment reference agreeable to both parties; and
- pay the complainant $750.00 as compensation for the loss and damages suffered.

Rossi v. School District #57

Prohibited Ground: Sex (the *Human Rights Code*, Section 7 and 8)

Member Designate: James R. Edgett

Date of Decision: December 27, 1985

Allegation: Mr. Rossi alleged that School District #57 refused to hire him to teach physical education classes at McKenzie Secondary School because of his sex.

Mr. Rossi was employed on contract as a temporary physical education teacher at Blackburn Junior Secondary School from January to June 1984. On May 13, he contacted Mr. Arnold Boomhower, Principal of McKenzie Secondary School, about a vacant teaching job. Mr. Boomhower said that he wanted a woman in the position and he repeated that preference to Mr. Rossi in June 1984 after the latter had applied for the position. In July, the District hired a woman with no previous teaching experience in School District #57, and this was approved by the School Board on August 28, 1984. No male applicants were considered for the position. Mr. Rossi's teaching contract was not renewed.

Testimony was heard from eight male physical education teachers, including Mr. Rossi, and two female teachers in the District regarding various ways in which they carried out supervision of girls' change rooms. The male teachers supervised by standing outside the change rooms, or by sending in another female student or school employee. Evidence indicated that about half the teachers had experienced some minor incidents or problems in supervision but no major difficulties. There was also no evidence of inherent danger to students or of injuries and loss claims from activities in the change rooms, compared to situations involving dangerous gymnasium activities or exercises for which close supervision of students is required.

Response: The School District took the position that it had reasonable cause to discriminate against Mr. Rossi on the basis of sex, and that this was necessary for the maintenance of public decency. It argued that the position required direct supervision of student change rooms before and after physical education classes. Such supervision should be carried out by teachers of the same sex, and therefore Mr. Rossi would be incapable of discharging all of the duties of the position.

Decision: James Edgett reviewed the relevant *School Act* Regulation and legal precedents on the issue of the standard of supervision a teacher is expected to exercise towards the students. He found that the problems regarding change rooms related almost exclusively to breach of school rules and were disciplinary matters and not problems of safety. He was satisfied that the District had failed to prove the need for direct supervision in the sense of the physical education teacher having to be present in the change rooms, either regularly or sporadically, or that male physical education teachers could not provide either 'effective supervision', or 'assistance necessary for the assistance of pupils'. He therefore concluded the issue of public decency was not involved.

The Member Designate found that the School District had discriminated against Mr. Rossi in contravention of the *Human Rights Code* by expressing a preference as to sex (Section 7), and by refusing to consider his application for employment because of his sex (Section 8). With respect to the discrimination under Section 8, he took into consideration the fact that Mr. Rossi, because of his lack of seniority, would not have been the successful applicant.

The District was ordered to cease the contravention, and to give Mr. Rossi the right to apply and be considered for positions as a girls' physical education teacher in the District. The District was ordered to pay him $276.12 for lost wages in attending the hearing.

Steinhauser v. Jimbo's Pancake House, Inc.

Prohibited Ground: Physical and Mental Disability (the *Human Rights Code*, Section 3)

Member Designate: Douglas J. Wilson

Date of Decision: July 4, 1985

Allegation: Mrs. Gudrun Steinhauser alleged that her daughter Karen Steinhauser was denied access to Jimbo's Pancake House in Burnaby because of her physical and mental disability.

Karen Steinhauser is completely paralysed as a result of a 1980 injury and uses a wheelchair. She does not talk but does communicate by blinking her eyes.

Mrs. Steinhauser testified that the owner, Mr. Lai, had started yelling at them when they entered the restaurant, had used rude and vulgar language, and had accused her of causing damage with the wheelchair.

Response: Mr. Lai stated that he had tried to give Mrs. Steinhauser a hand because the hallway was narrow, but that she got mad and 'screamed' at him when he tried to help. He denied accusing her of causing damage.

Testimony was heard from two customers and the Hostess-Manager, Jermaine Lim, of another restaurant owned by Mr. Lai. The customers testified that they had received assistance and were well treated when they brought relatives in wheelchairs to the other restaurant, and the Hostess-Manager stated that Mr. Lai treats all customers courteously.

Decision: Douglas Wilson found that the contradictory testimony of Mrs. Steinhauser and Mr. Lai made it impossible to understand the cause and nature of the incident. He accepted the evidence of the two customers as to their treatment and found that Ms. Lim was sincere in testifying as to Mr Lai's usual treatment of disabled customers.

The Council member was unable to find that there was a denial of service for a discriminatory reason and dismissed the complaint as not justified.

McDevitt v. McMordie's Copper and Brass Ltd.

Prohibited Ground: Sex (the *Human Rights Act*, Section 8)

Member Designate: Natexa Verbrugge

Date of Decision: October 9, 1985

Allegation: Michael McDevitt alleged he was refused an interview for the position of retail sales clerk with McMordie's Copper and Brass store in North Vancouver because of his sex.

Mr. McDevitt testified he was referred to the job on November 29, 1984, by the Canada Employment Centre and that he had the basic qualifications including previous retail experience. When he telephoned Mrs. Sally Carter at about 2 p.m. on November 30 about the referral, she interrupted him stating that she had never had a male sales clerk and telling him not to come in for an interview. When he asked whether that was discrimination, she replied, 'If that's discrimination, too bad' and hung up. Mr. McDevitt made notes of the telephone conversation on the C.E.C. job referral slip which was entered as evidence.

Response: Mrs. Carter testified that the telephone call was made on November 29 and had interrupted her with a customer. She testified she told Mr. McDevitt that it would be a waste of his time coming in for an interview as they were looking for a mature woman who could relate to the store's predominantly female clientele. She testified that she was stunned when he stated she was contravening the *Human Rights Act*, and denied hanging up on him.

A former store employee, Deborah Hughes, testified Mrs. Carter was always polite and outgoing with the customers and on the phone, and she had never heard Mrs. Carter say she would only have women working in any part of the store.

Testimony was heard from Mr. John Panton, Mrs. Carter's brother, who has had extensive experience in marketing and works at certain busy times in the store. He felt that Mr. McDevitt should have attempted to sell himself to Mrs. Carter, but instead had chosen to file a complaint of discrimination. Mr. Panton denied that a man can sell as well as a woman in this business and stated it is a bona fide occupational requirement to be female.

Decision: Natexa Verbrugge found that a *prima facie* case of discrimination had been established because of the admission that Mrs. Carter was looking for a mature woman. The issue of whether being female is a bona fide occupational requirement for a sales clerk was reviewed in light of the two-pronged test developed in court decisions on two previous human rights cases (*Ontario Human Rights Commission and Dunlop et. al. v. the Borough of Etobicoke* (1982) and *Caldwell et. al. v. St. Thomas Aquinas High School et. al.* (1984), 6 C.H.R.R. D/2643). Regarding the subjective part of the test, the Member Designate concluded that Mrs. Carter's stated preference was imposed honestly, in good faith and in the sincere belief that such preference was in the interests of the adequate performance of the work. With respect to the objective test for a *bona fide* occupational requirement, it was found that the evidence did not justify a finding that being female is central to being able to sell creatively and maintain an ambience in a store where 80% of the customers are female.

Based on evidence given and the law discussed, the Member Designate found the complaint to be justified. The Respondent was ordered to refrain from further discrimination on the basis of sex and to pay Mr. McDevitt the sum of $200.00.

Fields v. Willie's Rendezvous Inc.

Prohibited Ground: Sex (sexual harassment) (the *Human Rights Code*, Section 8)

Member Designate: Eric D. Powell

Date of Decision: October 15, 1985

Background: This hearing was convened after the Supreme Court of British Columbia set aside the decision of an earlier hearing which dismissed the complaint.

Allegation: Ms. Fields alleged continual sexual harassment by her employer Mr. Ueffing in the course of her employment from November 1983 until April 1984 when she was terminated. She testified this included touching, grabbing or pinching, crude sexual innuendos and sexual overtures. She stated that Mr. Ueffing would pinch or grab her frequently every day. A number of notes with sexual overtones were entered as exhibits.

Evidence was presented by another employee that she had experienced the same type of behaviour from Mr. Ueffing during her employment from December, 1983 to January, 1984, and that she had seen him put his arms around Ms. Fields and bump her from behind. A second witness who had been fired after working for three days at the restaurant testified that Mr. Ueffing had repeatedly grabbed and pinched her on the buttocks.

Response: Testimony was heard from a number of witnesses in support of Mr. Ueffing's case that he was effusive, and of a very friendly nature toward both his staff and customers.

Mr. Ueffing stated that he wrote notes to whoever was opening the restaurant because he thought the person would feel good if she got a 'happy note'. He felt that the whole matter was completely out of proportion and that it was not meant to be serious. He denied ever pinching or grabbing Ms. Fields, but acknowledged he hugged her several times a week and often kissed her on the cheek. He also denied the allegations of the employees who testified in support of Ms. Fields.

Decision: Eric Powell reviewed the evidence presented by both counsel in light of the definition of sexual harassment set out in a previous B.C. Board of Inquiry decision *(Zarankin v. Johnstone)* which was subsequently affirmed by the B.C. Supreme Court. He accepted that Mr. Ueffing had persistently and frequently touched Ms. Fields in the manner she described, and that Ms. Fields did everything she thought possible to avoid these acts while, at the same time, maintaining her employment.

The Member Designate found that Mr. Ueffing knew or ought to have known that his overtures were at the expense of his young employee's feelings of dignity and self-respect. In this regard, he noted that Ms. Fields was 19 years of age and inexperienced in the workforce and Mr. Ueffing was 46 years of age and her employer. His conduct and behaviour were unacceptable and unreasonable; they interfered with her work performance and created an intimidating and offensive work environment.

The Member Designate concluded Ms. Fields was subject to discriminatory conditions of employment due to sexual harassment. He ordered that Mr. Ueffing refrain from committing the same or a similar contravention, and pay Ms. Fields $1,500.00 as compensation for the humiliation and injury to feelings of self respect.

APPENDIX A

SUMMARY OF ACTIVITY

April 1, 1985 - March 31, 1986

The following tables detail the nature of complaints received, the level of intake activity, the disposition of complaints prior to investigations under Section 13 of the ***Human Rights Act*** and dispositions of complaints following investigations. In addition, the number of complaints by region of the province is included.

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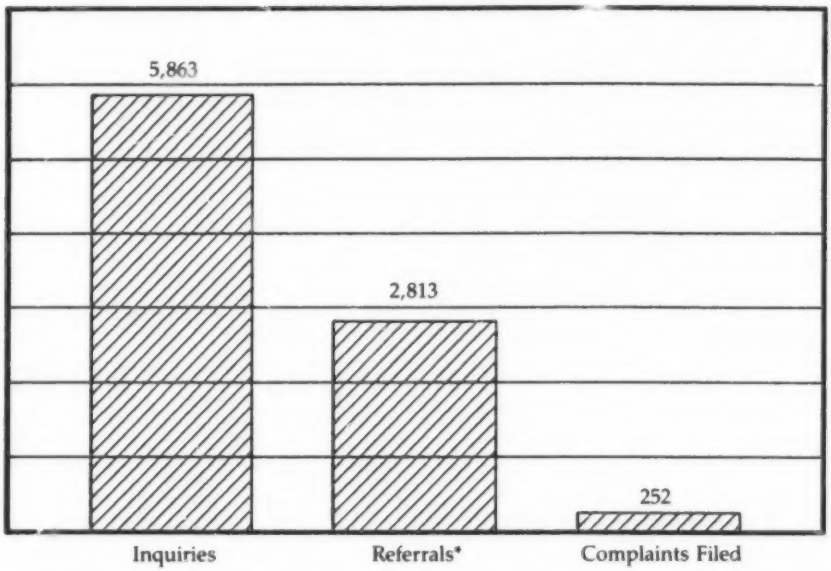
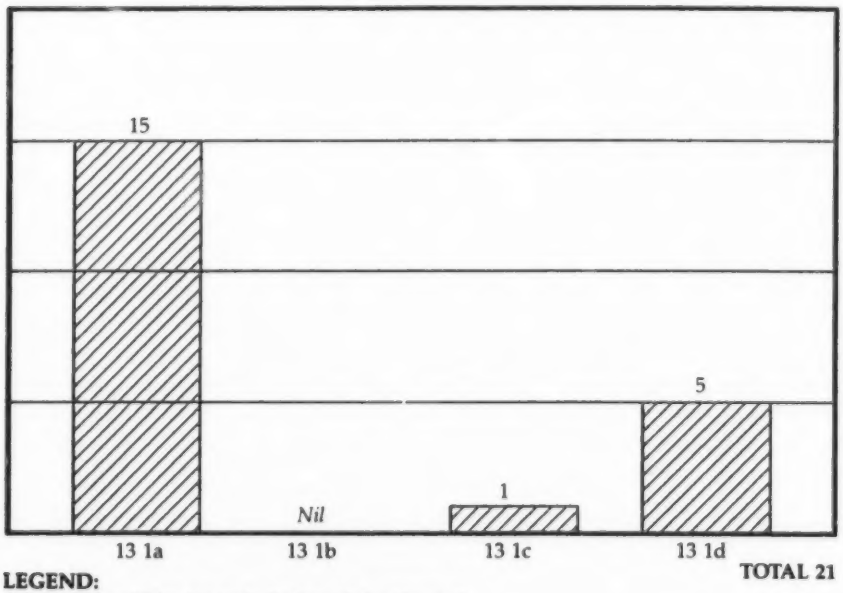
Table 7	Number of Complaints by Regional District — April 1, 1985 to March 31, 1986.

Table 1
INTAKE ACTIVITIES
April 1, 1985 to March 31, 1986



* Referrals are persons seeking assistance who are referred to another agency which can best assist them

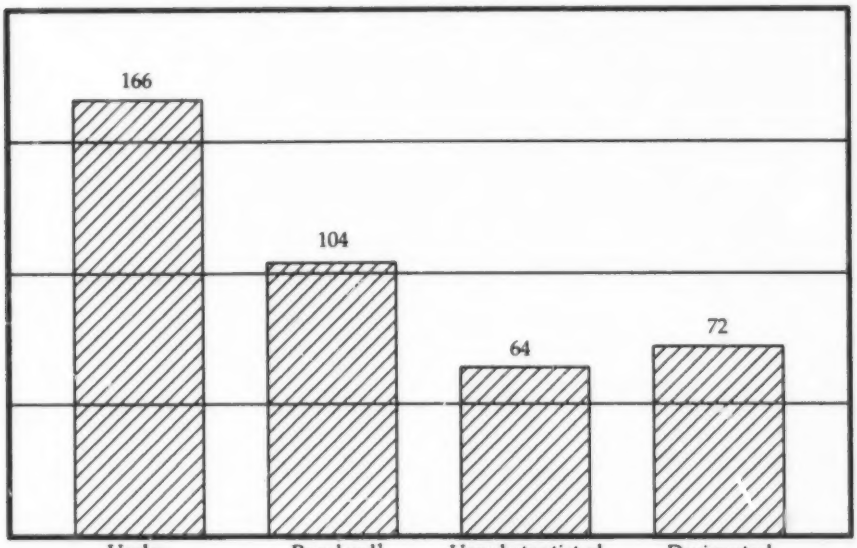
Table 2
DISPOSITION UNDER SECTION 13(1)
April 1, 1985 to March 31, 1986



TOTAL 21

LEGEND:
13 1a Not within the jurisdiction of the Council
13 1b More appropriately dealt with under another Act
13 1c Is trivial, frivolous, vexatious or made in bad faith
13 1d Based on facts that occurred more than six months before complaint was filed

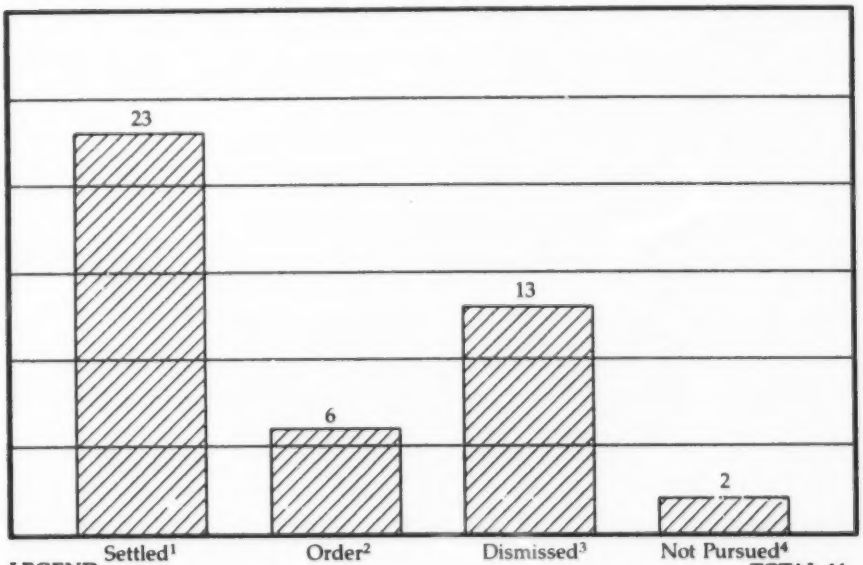
Table 3
STATUS OF COMPLAINTS
At March 31, 1986



LEGEND: **TOTAL 406[2]**

1. Resolved includes complaints that are settled, withdrawn or not pursued
2. Total includes complaints carried forward from the previous reporting period

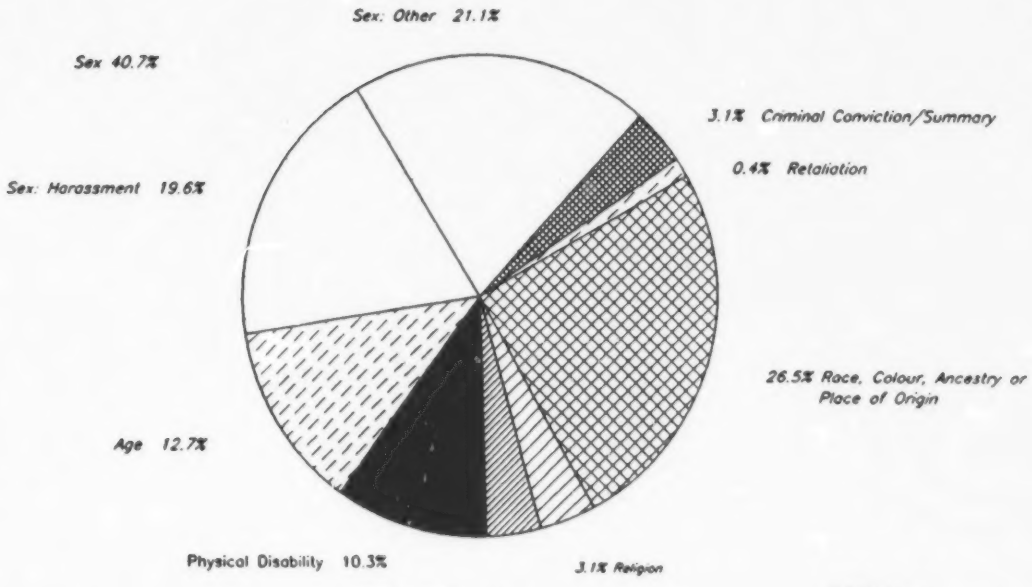
Table 4
DISPOSITION OF COMPLAINTS DESIGNATED TO HEARINGS
April 1, 1985 to March 31, 1986



LEGEND: **TOTAL 44**

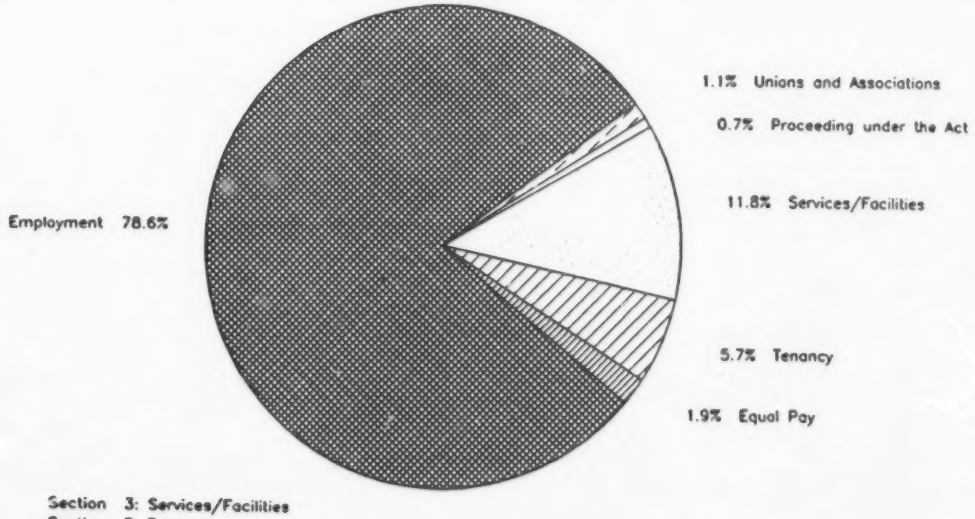
1. Parties settled before or during Hearing
2. Complaint justified, Order made in favour of Complainant
3. Complaint not justified
4. Complainant did not wish to pursue the complaint

Table 5
COMPLAINTS BY PROHIBITED GROUNDS
April 1, 1985 to March 31, 1986



TOTAL 252

Table 6
COMPLAINTS BY SECTION OF THE ACT
April 1, 1985 to March 31, 1986



Section 3: Services/Facilities
Section 5: Tenancy
Section 7: Equal Pay
Section 8: Employment
Section 9: Unions and Associations
Section 20: Proceeding under the Act

TOTAL 252

Table 7
NUMBER OF COMPLAINTS BY REGION
April 1, 1985 - March 31, 1986

REGION NUMBER	NAME OF REGION	NUMBER OF COMPLAINTS	PERCENT
01	Alberni-Clayoquot	3	1.19
02	Bulkley-Nechako	8	3.17
03	Victoria Area	35	13.89
04	Cariboo	3	1.19
06	Central Kootenay	1	0.40
07	Central Okanagan	8	3.17
08	Columbia-Shuswap	1	0.40
09	Comox-Strathcona	3	1.19
10	Cowichan Valley	5	1.98
12	East Kootenay	10	3.97
14	Fraser-Ft. George (Pr. George)	10	3.97
15*	Greater Vancouver	134	53.17
16	Kitimat-Stikine	3	1.19
17	Kootenay Boundary (Trail)	3	1.19
19	Nanaimo Area	4	1.59
20	North Okanagan	4	1.59
22	Okanagan/Similkameen	2	0.79
23	Peace River-Liard	4	1.59
25	Skeena-Queen Charlotte	3	1.19
26*	Squamish-Lillooet	1	0.40
29	Thompson-Nicola (Kamloops)	7	2.78
	TOTAL	**252**	

* Intakes handled by Vancouver Office
Remainder through Victoria

APPENDIX B

HUMAN RIGHTS ACT

HUMAN RIGHTS ACT

CHAPTER 22

[Act administered by the Ministry of Labour]

Assented to May 16, 1984.
[Consolidated September 6, 1985]

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Interpretation

1. In this Act

"age" means an age of 45 years or more and less than 65 years;

"council" means the British Columbia Council of Human Rights;

"employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

"employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;

"employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;

"occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

"person" includes an employer, an employment agency, an employers' organization, an occupational association and a trade union;

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1984-22-1.

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

Discriminatory publication

2. (1) No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act.

(2) Notwithstanding subsection (1) but subject to the *Civil Rights Protection Act*, a person may, by speech or in writing, freely express his opinions on a subject.

1984-22-2.

Discrimination in public facilities

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance.

1984-22-3.

Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons.

1984-22-4.

Discrimination in tenancy premises

5. (1) No person shall

(a) deny to a person or class of persons the right to occupy, as a tenant, space that is in any way represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply where a person in any way represents that space is available for occupancy by another person who is to share with him the use of any sleeping, bathroom or cooking facilities in the space.

1984-22-5.

Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

1984-22-6.

Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

(a) no action shall be commenced later than 12 months from the termination of his services, and

(b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

1984-22-7.

Discrimination in employment

8. (1) No person or anyone acting on his behalf shall

(a) refuse to employ or refuse to continue to employ a person, or

(b) discriminate against a person with respect to employment or any term or condition of employment,

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

(a) as it relates to age, to any bona fide scheme based on seniority, or

(b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

1984-22-8.

Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall

(a) exclude any person from membership,

(b) expel or suspend any member, or

(c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or member, or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

1984-22-9.

PART 2

COUNCIL OF HUMAN RIGHTS

Council established

10. (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of not more than 5 members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

1984-22-10.

Complaints

11. (1) A person who alleges that he has been discriminated against contrary to this Act may file a complaint with particulars with the council.

(2) Where the council is satisfied that a person alleged to have been discriminated against contrary to this Act consents to the filing of a complaint and, in the opinion of the council, it is in the interests of that person that the complaint be filed, the council may accept a complaint filed on his behalf by another person.

(3) Where a complaint is filed under subsection (2), the person on whose behalf the complaint is filed shall, for the purposes of sections 12 to 16, be considered to be the complainant.

(4) Subject to section 13, the council shall investigate a complaint.

1984-22-11.

Inspection of records

12. For the purposes of conducting an investigation, the council may make an examination and inquiry that it considers necessary to ascertain whether this Act has been complied with and may

(a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information the council requires respecting the subject matter of the complaint, and

(b) require the production of records relating to the subject matter of the complaint.

1984-22-12.

Decision not to proceed with investigation

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

1984-22-13.

Procedure after investigation

14. (1) On completion of an investigation, the council shall

(a) order that the proceedings be discontinued,

(b) recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened this Act, submit a report to the minister,

(c) submit a report to the minister, or

(d) designate one member of the council to receive, as specified by him, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council

(i) where he considers the complaint is not justified, shall dismiss the complaint, or

(ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b).

(2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.

(2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,

(a) the privileges and protection of section 12 of the *Inquiry Act*, and

(b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act*

given to a commissioner appointed under Part 2 of that Act.

(3) On receipt of a report under subsection (1) (b) or (c), the minister shall

(a) refer the complaint to a board of inquiry, or

(b) order that the proceedings be discontinued.

1984-22-14; 1985-51-32, effective July 19, 1985 (B.C. Reg. 232/85).

Decision to be communicated in writing

15. An order under section 14 (1) (a) or (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

1984-22-15.

PART 3

BOARD OF INQUIRY

Board of inquiry

16. (1) A board of inquiry shall consist of one person appointed by the minister.

(2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.

(3) The persons who are entitled to be parties to proceedings before a board of inquiry are

(a) the complainant,

(b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,

(c) the person who is alleged to have contravened this Act, and

(d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board of inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

1984-22-16.

Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it

(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention, and

(b) may order the person who contravened this Act to

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, he was denied contrary to this Act, and

(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention,

and, in addition to or instead of any other order under this paragraph, may order the person who contravened this Act to pay to the person discriminated against an amount not exceeding $2 000.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

1984-22-17.

PART 4

GENERAL

Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

(a) to give evidence, or

(b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

1984-22-18.

Exemptions

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

1984-22-19.

Protection

20. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1984-22-20.

Style of cause for proceedings

21. (1) A proceeding under this Act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

1984-22-21.

Technical and other matters

22. (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

1984-22-22.

Offence Act

23. Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

1984-22-23.

Regulations

24. The Lieutenant Governor in Council may make regulations.

1984-22-24.

25. [Spent. 1984-22-25.]

26. [Spent. 1984-22-26.]

Transitional

27. (1) Where, before this Act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received within 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

1984-22-27.

Commencement

28. This Act comes into force by regulation of the Lieutenant Governor in Council.

1984-22-28.

[Note: Section 10 effective July 20, 1984, B.C. Reg. 231/84, Part II Gazette Vol. 27, p. 336. Sections 1 to 9 and 11 to 27 effective September 14, 1984, B.C. Reg. 282/84, Part II Gazette Vol. 27, p. 456.]

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